

FILED

AUG 14 2001

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY SH  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

JONNY J. HEPLER

Plaintiff

vs.

ORKIN EXTERMINATING COMPANY, INC.

Defendant

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CAUSE NO. \_\_\_\_\_

**A 01 CA 529**

**SS**

**JURY DEMANDED**

**PLAINTIFF JONNY J. HEPLER'S ORIGINAL COMPLAINT**

**NATURE OF THE CASE**

1. This action is brought to remedy age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.* ("ADEA").

**JURISDICTION and VENUE**

2. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1337, 1343; and 29 U.S.C. § 626.
3. Venue is proper within this district because the unlawful discrimination and employment practices alleged below were committed within the Western District of Texas.

**PARTIES**

4. Plaintiff Jonny J. Hepler, age fifty-one years old, was employed by Defendant Orkin Exterminating Company, Inc. ("Orkin") until on or about December 6, 1999. Plaintiff was a resident of Travis County, Texas at all relevant times.
5. Defendant Orkin Exterminating Company, Inc., an employer who at all relevant times

1

employed more than twenty employees, is a corporation authorized to do business in the State of Texas and may be served with process by serving its registered agent for service, The Prentice Hall Corporation System, 800 Brazos, Suite 750, Austin, Texas 78701

### **CONDITIONS PRECEDENT**

6. Plaintiff Johnny J. Hepler filed a charge with the Equal Employment Opportunity Commission (“EEOC”) on May 31, 2000, within 300 days after Defendant terminated his employment, alleging that Defendant had discriminated against him in violation of the ADEA. On May 15, 2001, the EEOC issued Plaintiff a right to sue letter. Plaintiff filed this Complaint within ninety (90) days of receipt of the EEOC’s right to sue letter.

### **FACTUAL ALLEGATIONS**

7. Plaintiff Jonny J. Hepler is fifty-one years old.
8. Plaintiff Jonny J. Hepler was employed by Orkin Exterminating Company, Inc., from October 1, 1992 through December 6, 1999.
9. Plaintiff was the Branch Manager for Defendant’s Austin Branch location.
10. Plaintiff Jonny J. Hepler ranked 21st out of a field of 48 Branch Managers in Defendants West Central Division Presidents Club Standings for 1999.
11. Plaintiff Jonny J. Hepler ranked 16th out of a field of 49 Branch Managers in Defendants West Central Division 1999 year to date Customer Satisfaction Ranking in December 1999.
12. On December 2, 1999, Plaintiff Jonny J. Hepler passed a company quality audit with scores of “commendable”, “commendable”, and “average”. On his previous audit, in March 1999, he scored 3 commendable ratings.
13. On December 6, 1999, Plaintiff was terminated for purportedly failing the December 2, 1999

quality audit.

14. Plaintiff was then replaced by a younger man who had been with the company only three years.

15. Defendant engaged in a pattern of systematically eliminating employees over the age of forty.

#### **FIRST CLAIM FOR RELIEF**

16. Plaintiff incorporates paragraphs 1 through 15 as if fully written herein. Defendant Orkin Exterminating Company, Inc. discriminated against Plaintiff Jonny J. Hepler in the terms and conditions of his employment on the basis of age in violation of the ADEA. As a direct and proximate result of Defendant's discriminatory acts, Plaintiff has suffered and will continue to suffer loss of employment, loss of income, loss of other employment benefits, and suffered and continues to suffer pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

#### **SECOND CLAIM FOR RELIEF**

17. Plaintiff incorporates paragraphs 1 through 16 as if fully written herein. Defendant engaged in the above discriminatory acts wilfully. Defendant is liable for liquidated damages pursuant to 29 U.S.C. § 626(b).

#### **THIRD CLAIM FOR RELIEF**

18. Plaintiff incorporates paragraphs 1 through 17 as if fully written herein. Defendant engaged in the above discriminatory acts maliciously or with reckless indifference to Plaintiff's federally protected rights. Plaintiff is therefore entitled to an assessment of punitive damages against Defendant.

#### **JURY DEMAND**

19. Plaintiff hereby demands a trial by jury.

**PRAYER FOR RELIEF**

20. WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:
- a) back pay, prejudgment interest, and damages for all employment benefits he would have received but for the discriminatory acts of Defendant;
  - b) compensatory and punitive damages;
  - c) liquidated damages;
  - d) costs;
  - e) reasonable attorney's fees; and
  - f) such other and further legal and equitable relief to which plaintiff is entitled by law and this Court deems to be just and appropriate.

Respectfully submitted,

The Law Offices of DeCarli and Irwin  
605 Brazos Street, Suite 200  
Austin, Texas 78701  
(512) 258-9299  
(512) 258-1395 fax

By: 

DEBRA IRWIN

Texas Bar Number 00792029

ROBERT C. DECARLI

Texas Bar Number 00787345

**ATTORNEYS FOR PLAINTIFF**